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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91193365
Party	Defendant POLARIS Laboratories, LLC
Correspondence Address	MARY JANE FRISBY BARNES & THORNBURG LLP 11 S MERIDIAN ST INDIANAPOLIS, IN 46204-3506  mfrisby@btlaw.com
Submission	Answer
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Date	02/19/2010
Attachments	ApplicantsAnswer.pdf ( 4 pages )(255843 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration Applications Serial No. 77/573,498  
for the mark POLARIS LABORATORIES, and Serial No. 77/573,619 for  
the mark POLARIS LABORATORIES and Design.

POLARIS INDUSTRIES INC.  
Opposer

v.

Opposition No. 91193365

POLARIS LABORATORIES, LLC  
Applicant

**ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION**

Polaris Laboratories, LLC, (“Applicant”), for its Answer and Affirmative Defenses to the  
Notice of Opposition filed by Polaris Industries Inc., (“Opposer”), states as follows:

**ANSWER**

1. Applicant admits the averments of Paragraph 1 of the Notice of Opposition.
2. Applicant admits the averments of Paragraph 2 of the Notice of Opposition.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 3 of the Notice of Opposition, and therefore denies them.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4 of the Notice of Opposition, and therefore denies them.
5. Applicant denies the averments of Paragraph 5 that Opposer’s POLARIS mark is famous, and that Opposer’s POLARIS mark became famous prior to Applicant’s use of its POLARIS LABORATORIES marks of the registration applications being opposed; but Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 5 of the Notice of Opposition, and therefore denies them.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6 of the Notice of Opposition, and therefore denies them.

7. Applicant denies the averments of Paragraph 7 of the Notice of Opposition.

8. Applicant denies the averments of Paragraph 8 of the Notice of Opposition.

9. Applicant denies the averments of Paragraph 9 of the Notice of Opposition.

10. Applicant denies the averments of Paragraph 10 of the Notice of Opposition.

11. Applicant denies the averments of Paragraph 11 of the Notice of Opposition.

12. Applicant denies the averments of Paragraph 12 of the Notice of Opposition.

13. Applicant denies the averments of Paragraph 13 of the Notice of Opposition.

14. Applicant admits the averment of Paragraph 14 that if Applicant is granted registration of its POLARIS LABORATORIES marks of the registration applications being opposed that Applicant will obtain *inter alia a prima facie* exclusive right to use Applicant's POLARIS LABORATORIES marks in commerce under the provisions of the U.S. Trademark (Lanham) Act; but Applicant denies the remaining averments of Paragraph 14 of the Notice of Opposition.

15. Applicant denies the averments of Paragraph 15 of the Notice of Opposition.

WHEREFORE, Applicant requests that Opposer's Notice of Opposition be dismissed, with prejudice, and that registration of Applicant's POLARIS LABORATORIES marks be granted thereafter.

#### **AFFIRMATIVE DEFENSES**

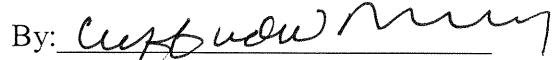
1. Opposer is not the owner of a mark that qualifies as a "famous" mark as that term is defined in §43(c)(2) of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1125(c)(2).

2. Opposer's Notice of Opposition otherwise fails to state a claim upon which relief can be granted under §43(c) of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1125(c).

3. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted under §2 of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1052, for, *inter alia*, Applicant's services identified in its opposed registration applications are completely unrelated to Opposer's goods and services; the channels of trade and lines of commerce of Applicant's services identified in its opposed registration applications are completely different from those of Opposer's goods and services; the relevant consumers of Applicant's services identified in its opposed registration applications and the relevant consumers of Opposer's goods and service are sophisticated consumers, and Applicant's services and Opposer's goods and services are not purchased on impulse; Applicant's POLARIS LABORATORIES marks and Opposer's POLARIS marks are not identical, and they create completely different commercial impressions; Applicant's POLARIS LABORATORIES marks and Opposer's POLARIS marks have co-existed in use in commerce for more than ten (10) years without creating any consumer confusion, mistake or deception; and there can be no likelihood of consumer confusion, mistake or deception cognizable under §2(d) of the U.S. Trademark (Lanham) Act, 15 U.S.C. §1052(d), for there is no reasonable probability that Applicant's POLARIS LABORATORIES marks and Opposer's POLARIS marks are ever seen by a common set of consumers when the marks are in contemporaneous use in commerce, making a likelihood of consumer confusion, mistake, or deception impossible, by definition.

WHEREFORE, Applicant requests that Opposer's Notice of Opposition be dismissed, with prejudice, and that registration of Applicant's POLARIS LABORATORIES marks be granted thereafter.

Respectfully submitted,

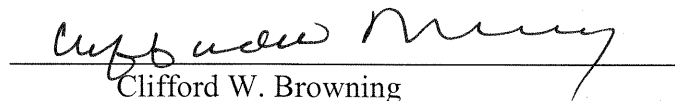
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Counsel for Applicant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 19th day of February, 2010, a copy of the foregoing Answer to the Notice of Opposition was served upon the counsel of record for the Opposer, Polaris Industries Inc., by first-class U.S. Mail, postage prepaid, addressed to:

Scott W. Johnson  
Merchant & Gould, P.C.  
P. O. Box 2910  
Minneapolis, MN 55402-0910

  
Clifford W. Browning